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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 735

EPIFONIO GARCIA, *et al.*,

Appellants,

vs.

BALBINO MORALES,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

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IN THE

Supreme Court of the United States

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No. 735

EPIFONIO GARCIA, JUAN C. RUIZ, MIGDONIO MORALES and TOMAS LEON, as Guardian *Ad Litem* of ANDRE LEON PAGAN,

Appellants,

vs.

BALBINO MORALES,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

Motion to Dismiss

Pursuant to Rule 16(b) of this Court, the Attorney General of the State of New Jersey, on behalf of the State of New Jersey, and the Unsatisfied Claim and Judgment Fund, moves to dismiss this appeal on the ground that the judgment rests on an adequate non-federal basis and that it does not present a substantial federal question.

Opinion Below

The opinion from which the appellant appeals to this Court is that of the Supreme Court of New Jersey, decided June 6, 1966, reported in 47 N. J. 269, 220 A. 2d 198 (1966), affirming the order of the Superior Court, Law Division. No written opinion was rendered by the trial court. The Supreme Court of New Jersey denied a petition for rehearing on July 1, 1966.

Questions Presented

1. Is the judgment of the New Jersey Supreme Court predicated on an adequate and independent non-federal ground which would bar review by this Court?

2. Does the statutory maximum of $20,000 contained in N.J.S.A. 39:6-69(b) and its correlative provisions under the New Jersey Unsatisfied Claim and Judgment Fund Law, pursuant to which payment is made to persons injured in a single accident to assure some measure of relief where a judgment is recovered against an uninsured motorist violate any federal constitutional guarantees as:

   (a) violative of the guaranty of the due process clause;

   (b) violative of the provisions against the taking of property without just compensation;

   (c) violative of the guaranty of the equal protection clause?

3. Have the appellants raised a substantial federal question by asserting without demonstration that the New Jersey Unsatisfied Claim and Judgment Fund violates federal constitutional guarantees?

Statement of the Case

A. Proceedings and Facts Below.

An automobile negligence action was brought by four passengers, the appellants herein, against the uninsured motorist, Balbino Morales, the named appellee herein. Balbino Morales was an uninsured New Jersey owner and operator of an automobile involved in a one-car accident. Service was effected and the action was defended by the New Jersey Unsatisfied Claim and Judgment Fund.

Judgment was entered in the Law Division of the Superior Court of New Jersey against the defendant in favor of the appellants, all of whom were passengers in the Morales vehicle at the time of the accident. The amounts totalling $85,000.00, of the judgment for the individual plaintiffs, were as follows:

Epifonio Garcia	$30,000.00
Juan Comacho Ruiz	8,500.00
Migdonio Morales	30,000.00
Andre Leo Pagan	16,500.00

No appeal from the judgment was taken.

Thereafter, as required by the Unsatisfied Claim and Judgment Fund Law, appellants served written notice upon the Board of their application for an Order directing payment out of the Fund. This motion was made pursuant to N.J.S.A. 39:6-69 which provides as follows:

> "When any qualified person recovers a valid judgment in any court of competent jurisdiction in this State, against any other person, who was the operator or owner of a motor vehicle, for injury to, or death of, any person or persons, or a similar valid

judgment in such court against such a defendant for an amount in excess of $100.00, exclusive of interest and costs, for damages to property except property of others in charge of such operator or owner or such operator's or owner's employees, arising out of the ownership, maintenance or use of the motor vehicle in this State on or after April 1, 1955, and any amount remains unpaid thereon in the case of a judgment for bodily injury or death, or any amount in excess of $100.00 remains unpaid thereon in case of a judgment for damage to property, such judgment creditor may, upon the termination of all proceedings, including reviews and appeals in connection with such judgment, file a verified claim in the court in which the judgment was entered and, upon 10 days' written notice to the board may apply to the court for an order directing payment out of the fund, of the amount unpaid upon such judgment for bodily injury or death, which does not exceed, or upon such judgment for damage to property which exceeds the sum of $100.00 and does not exceed—

"(a) The maximum amount or limit of $10,000.00, exclusive of interest and costs, on account of injury to, or death of, 1 person, in any 1 accident, and

"(b) The maximum amount or limit, subject to such limit for any 1 person so injured or killed, of $20,000.00, exclusive of interest and costs, on account of injury to, or death of, more than 1 person, in any 1 accident, and

"(c) The maximum amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any 1 accident."

More particularly, appellants sought payments of the judgments subject to the $10,000 per capita limitation as set forth in N.J.S.A. 39:6-69(a) (hereinafter sometimes referred to as "section 69(a)), the proviso applicable where one person is injured in a single accident. N.J.S.A. 39:6-69(b) (hereinafter sometimes referred to as "section 69-(b)), applies where two or more persons are injured in any one accident. The notice set forth that the appellants would apply for an Order directing such payment as follows:

Epifonio Garcia	$10,000.00
Juan Comacho Ruiz	8,500.00
Migdonio Morales	10,000.00
Andre Leo Pagan	10,000.00

The Notice of Motion was accompanied by the requisite affidavit of the appellants pursuant to N.J.S.A. 39:6-70 and a Memorandum of Law. The appellants essentially sought the entry of an Order directing the individual payments noted immediately above, without regard to the limitations imposed by N.J.S.A. 39:6-73(c)(2), or those expressed in N.J.S.A. 39:6-69(b), on the ground that the limitations were prohibited by paragraphs 1 and 5 of Article I of the New Jersey Constitution, 1947, and Amendment XIV of the United States Constitution, specifically:

(1) The limitations constituted a denial of equal protection of the law to the plaintiffs.

(2) The limitations are arbitrary, capricious and unreasonable and thus work a denial of due process.

(3) The limitations imposed bear no real or substantial relation to the objects sought to be obtained by the legislation and, hence, effect a denial of due process.

(4) The classification inherent in the limitations is arbitrary and discriminatory and thus in derogation of the equal protection and due process sections cited.

An order was entered on July 1, 1965 by the Law Division of the Superior Court directing payment on a *pro rata* basis limited to the aggregate amount of $20,000 in accord with N.J.S.A. 39:6-69(b), the proviso applicable where two or more persons are injured in one accident.

An appeal was taken by the appellants to the Appellate Division of the Superior Court from the Trial Court's Order.

Upon application, the Superior Court, Appellate Division, on September 22, 1965, permitted the Attorney General to intervene in this appeal since the constitutionality of the Unsatisfied Claim and Judgment Fund Law had been drawn into question. R.R. 4:37-2.

On or about September 28, 1965 invoices for payment were forwarded to appellants' attorney. It was expressly understood that payment would be made without prejudice and without affecting in any way the within appeal.

Before argument was heard in the Appellate Division, the cause was certified directly to the Supreme Court of New Jersey. The Judgment of the Supreme Court of New Jersey, affirming the order made by the trial court, was entered on June 6, 1966 and a Petition for Rehearing, timely filed, was denied on July 1, 1966. A Notice of Appeal was filed in the Supreme Court of New Jersey on September 1, 1966.

B. The Unsatisfied Claim and Judgment Fund Law in New Jersey and its Relationship to the Financial Responsibility of the Uninsured Motorist at the Time of the Accident.

A strong legislative policy of assuring financial protection for innocent victims of automobile accidents is expressed in the several statutes in New Jersey dealing with financial responsibility and automobile liability insurance. Unsatisfied Claim and Judgment Fund Law, N.J.S.A. 39:6-61 to 39:6-91; Motor Vehicle Security-Responsibility Law, N.J.S.A. 39:6-23 to 39:6-60; Motor Vehicle Liability Security Fund Act, N.J.S.A. 39:6-92 to 39:6-104. These laws are not mere regulations of the relations between the insurer and the insured, but their purpose is to

> "induce the owners and operators of motor vehicles to procure liability insurance and, therefore, mitigate the evil sought to be corrected by those laws—the helplessness of persons injured by financially irresponsible motorists in the maintenance and use of their motor vehicles." *Proskurnja* v. *Elder,* 73 N. J. Super. 466, 474, 180 A. 2d 200, 204 (Law Div. 1962).

Within this comprehensive statutory scheme, the Fund Law, as the New Jersey Supreme Court states in *Robson* v. *Rodriguez,* 26 N. J. 517, 524-525, 141 A. 2d 1, 5 (1958), has the following legislative objective:

> "The Unsatisfied Claim and Judgment Fund Law is remedial legislation that was enacted as a result of concern over the economic hardship imposed upon persons who sustain personal injuries or property damage, or both, caused by financially irresponsible and uninsured motorists, where the claimants have no other source of compensation. *Dixon* v. *Gassert,*

> 26 N. J. 1 (1958). Its primary purpose is to mitigate this evil which springs in the main from the negligent operation of motor vehicles by uninsured persons. To this end the act provides for the creation of a fund, supported by imposts upon uninsured motor vehicle owners and insurance companies, out of which uncollectible judgments against uninsured or unknown motorists can be satisfied subject to certain limitations." See also, *Douglas* v. *Harris*, 35 N. J. 270, 279, 173 A. 2d 1, 5-6 (1961).

Thus, while the purpose of the Fund is to provide some measure of relief to those persons who come within the class intended to be protected, the benefits are not paid in lieu of the full amount of the judgment. *Corrigan* v. *Gassert*, 27 N. J. 227, 233, 142 A. 2d 209, 212 (1958); *Pistoria* v. *Buchowski*, 46 N. J. Super. 495, 497, 134 A. 2d 830, 831 (Law Div. 1957).

In effect, the Fund Law also serves, in part, to fill the gap left open by the requirement that proof of financial responsibility was only sought as to *future* accidents, leaving the victim to bear the loss of the "initial accident". See, *Buzzone* v. *Hartford Accident and Indemnity Co.*, 23 N. J. 447, 453, 129 A. 2d 561, 564 (1957). The Motor Vehicle Security-Responsibility Law requires the immediate deposit of security from uninsured persons involved in an accident causing bodily injury or property damage in varying minimal amounts on pain of license suspension. See, *e.g.*, N.J.S.A. 39:6-25. The minimum statutory insurance limits required for the heretofore uninsured motorist following his first accident reduced to judgment must provide:

> ". . . if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of

> not less than $10,000.00 because of bodily injury to or death of 1 person in any 1 accident and, subject to said limit for 1 person, to a limit of not less than $20,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident. . . ." N.J.S.A. 39:6-25.

Similar minimum limits are required where proof of future financial responsibility is required by the Director of the Division of Motor Vehicles under certain statutorily enumerated circumstances not pertinent here. N.J.S.A. 39:6-31; see also, N.J.S.A. 39:6-46.

Prior to his initial accident, every person registering an uninsured motor vehicle is obliged to pay to the Director of Motor Vehicles, in addition to any other fee prescribed by any other law, the "Unsatisfied Claim and Judgment Fund Fee" fixed by the Director for that registration license year. N.J.S.A. 39:6-63 [The fee shall in no case exceed $25.00.] The total amount of these fees, plus deficiency assessments levied against insurers writing liability insurance in this State are the revenues with which the Fund is maintained. N.J.S.A. 39:6-63.

The Fund Law sets up in detail the circumstances, conditions and procedures under which, and the extent to which, a person who has recovered a judgment against an uninsured motorist may resort to the Fund for "some measure of relief." *Lindsay* v. *Boles*, 61 N. J. Super. 516, 519, 161 A. 2d 324, 326 (Law Div. 1960). Most significantly, the claimant, after receiving payment from the Fund, still retains as against the judgment-defendant, the benefit of the unpaid portion of the principal and interest due on the judgment. *Lindsay* v. *Boles*, *supra*, p. 525. By the express provisions of N.J.S.A. 39:6-77,

> "... if more money is collected upon any such judgment than the amount paid out of the fund; the director shall pay the balance after reimbursing the fund, to the judgment creditor."

Thus, instead of holding a presently uncollectible paper judgment, the appellants, as they did in this case, receive a cash advance from the Fund with the continuing prospect that at some future date, the balance of the judgment may be collected and paid. In the interim, the Fund, which may be in a better position to wait out the judgment debtor, absorbs part of the economic loss occasioned by the accident restoring some measure of relief to appellants. See Elder, *The Unsatisfied Judgment Fund and the Irresponsible Motorist, Current Trends in State Legislation,* (1953-1954), p. 45, at p. 156.

It cannot be overstressed that the Fund Law was not intended to be a substitute for an automobile liability policy. It was designed, in part, to stimulate the voluntary purchase of insurance. *State Farm Mut. Auto. Ins. Co.* v. *Wall,* 87 N. J. Super. 543, 559-560, 210 A. 2d 109, 117-118 (Law Div. 1965).

It should be readily apparent that the limitation of $10,000 applicable to one person in a single accident (N.J. S.A. 39:6-69(a)), and the limitation of $20,000 applicable to two or more persons injured in one accident corresponds with the similar limitations under the Motor Vehicle Security-Responsibility Laws. N.J.S.A. 39:6-25, -31, -46. These corresponding limitations were not accidentally composed but were formulated to fit within the framework of an over-all statutory plan. Thus, appellants' constitutional attack on the aggregate limit proviso of section 69(b) where two or more persons are injured in a single accident, if it were successful, would, in effect, permit a per-

son to recover more when injured by an uninsured motorist than would be recoverable if injury was occasioned by a financially responsible motorist pursuant to the Motor Vehicle Security-Responsibility Laws. N.J.S.A. 39:6-25. Instead of achieving a minimal level of uniform treatment, regardless of whether the motorist is insured or uninsured, the appellants seek to disrupt the carefully plotted legislative scheme working a reverse discrimination in favor of the person injured along with others, by the uninsured motorist. Thus, contrary to appellants' contention, the use of aggregate limits of liability when employed in "state action" preserve standards of uniformity to all victims in automobile accidents. The result thereby achieved is in harmony with the comprehensive legislative program dealing with the problem of the financially irresponsible motorist and the victims of his negligence in New Jersey.

C. The Decision of the New Jersey Supreme Court.

The Supreme Court of New Jersey recognized the constitutional attack being leveled by the appellants and capsulized their argument in very specific terms. Appellants were claiming that N.J.S.A. 39:6-69(b) was unconstitutional because the aggregate limitation of $20,000 imposed thereby denies them equal protection of the law and discriminates against them in violation of the Federal and State Constitutions, and more particularly, the Fourteenth Amendment to the United States Constitution. Since one person injured in one accident can recover a maximum of $10,000 from the Fund under section 69(a), to limit the recovery of four persons, as section 69(b) purports to do, to a collective amount of $20,000 in one accident is to treat them unequally and to discriminate against them in the sense prohibited by the Constitution (A4a to A5a).

Appellants, it was noted, did not challenge the validity of section 69(a). In fact, they contended that when section 69(b) is excised from the statute as unconstitutional, section 69(a) remains as the basis for recovery of $10,000 each, by three of them and for $8,500 by the fourth. They argued that section 69(a) should be construed to create a benefit up to $10,000 for each person injured, no matter how many persons are injured, so long as all of them are injured in one accident (A5a).

The New Jersey Supreme Court held that the Legislature intended section 69(a) to relate only to the situation where one person is injured in one accident, and to provide a maximum recovery of $10,000 for such person. The Court pointed out that the plain language of the statute, ". . . the maximum amount or limit of $10,000, exclusive of interest and costs, on account of injury to, or death of, 1 person, in any 1 accident . . ." dictated such an interpretation. The Court further indicated that if it were to strike down section 69(b) alone and then construe section 69(a) as appellants suggest, the monetary liability of the Fund would be increased far beyond the limit intended by the Legislature. In the case at bar alone, the monetary liability would have been increased by $18,500 beyond the Legislature's contemplation.

Under these circumstances, since section 69(a) was not, as a matter of state law, susceptible of the interpretation urged by the appellants, they would gain nothing by an invalidation of section 69(b), and the New Jersey Supreme Court did not consider further the constitutional arguments.

Summary of Argument

Appellants do not contend before this Court that the New Jersey Supreme Court erroneously construed the New Jer-

sey statute, N.J.S.A. 39:6-69(a), which limits a maximum recovery of $10,000 where one person is injured in one accident. This is clearly a question solely of state law and of itself involves no federal question. Appellants, nevertheless, seek to sustain their standing in this Court by asserting that the proviso of N.J.S.A. 39:6-69(b), limiting on an aggregate basis the maximum amount payable where two or more persons are injured in a single accident, is unconstitutional on its face (Jurisdictional Statement, p. 11). Essentially, appellants are arguing that the use of aggregate limits of liability may be utilized by private insurers, but when incorporated by a state legislature as a means of limiting liability on the operation of a State Fund, the aggregate principle is constitutionally repugnant (Jurisdictional Statement, p. 13).

Appellants further assert that the aggregate limitation bears no reasonable relationship to the end of protecting innocent victims of uninsured motorists. While affording full "coverage" to 1 or 2 persons injured in a single accident, it effects reduced "coverage to individuals in only the most serious accidents where the needs of the victims and the needs of the community are the greatest" (Jurisdictional Statement, pp. 11-12).

Appellants also urge that there is a taking without compensation. Monies available to A, it is contended, are decreased solely to make funds available to B, C and D. In short, A's substantive interest in, or inchoate right to, property is taken, *pro tanto*, in order to enable a governmental use of such funds, *viz.*, benefiting B, C and D (Jurisdictional Statement, pp. 12-13).

Appellants further maintain that the statutory classification, *i.e.*, 1 person injured vs. 2 or more persons injured, is constitutionally deficient. The classification arises out

of pure chance depending upon how many persons are injured in an accident, rather than providing a "standard benefit" for injured victims as a class. In effect, appellants claim that there is unequal treatment among injured victims "even though there be identity of injury and identity of damage" (Jurisdictional Statement, p. 12).

The State of New Jersey argues herein that the judgment rendered by the New Jersey Supreme Court rests on an adequate and independent non-federal basis so as to preclude this Court from review. Clearly, the State Supreme Court's opinion indicates that the appellants, as a matter of state law, cannot be treated individually under section 69(a) to secure additional benefits. Thus, any further discussion of the constitutionality of section 69(b) would be tantamount to offering an advisory opinion.

It is further argued herein that the statutory maximum contained in N.J.S.A. 39:6-69(b) and its corollary provisions under the Unsatisfied Claim and Judgment Fund pursuant to which payment is made to persons injured in a single accident to assure some measure of relief where a judgment is recovered against an uninsured motorist is not violative of the due process clause of the Federal and State Constitutions, nor does it constitute an unconstitutional taking of property without just compensation. There is no "loss" or "taking" in a constitutional sense where the appellants have been financially remedied to some minimum extent and hold the continuing prospect as a judgment creditor of collecting the balance of the judgment.

It is further argued by the State that no denial of equal protection results because the size of a person's payment from the Fund in any given accident depends upon whether he is singly injured or injured along with others. The aggregate limits of liability principle forms part of the

comprehensive legislative scheme to assure a minimum, uniform level of recovery regardless of whether a person along with others, is injured by an insured or uninsured motorist.

ARGUMENT

POINT I

The judgment of the New Jersey Supreme Court is based on an adequate and independent non-federal ground which precludes review by this court.

It is a well-settled principle that this court will not review judgments of state courts that rest on adequate and independent state grounds. *Murdock* v. *Memphis,* 87 U. S. (20 Wall.) 590, 636; *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.,* 243 U. S. 157, 164; *Fox Film Corp.* v. *Muller,* 296 U. S. 207. This Court in *Herb* v. *Pitcairn,* 324 U. S. 117, 125-126, commented on the rationale supporting this principle when it stated:

> "The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments; not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."

The case at bar would serve as a classic example of a Court delivering an advisory opinion which would leave unaffected the judgment of the State court. See *Henry* v. *Mississippi*, 379 U. S. 443, 446-447, *rehearing denied*, 380 U. S. 926, *on remand*, 174 So. 2d 348 (Miss. Sup. Ct. 1965), *motion denied*, 381 U. S. 908. In fact, this Court by rendering an advisory opinion, would be doing the very thing which the New Jersey Supreme Court refrained from doing.

The New Jersey Supreme Court made it indelibly clear that it did not rule on the constitutional questions raised by the appellants. Nor did it evade dealing with them because of some rule of state pleading or procedure so as to prevent review of the decision upon the constitutional questions or to avoid a decision relative to federally guaranteed rights. See *Ward* v. *Love County*, 253 U. S. 17, 22-23; *Davis* v. *Wechsler*, 263 U. S. 22, 24-25; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, 455-458.

The Supreme Court of New Jersey interpreted state substantive law when it held that section 69(a) related only to the situation where one person is injured in one accident and that section could have no applicability to the facts presented here where four persons were injured in a single accident. Appellants were afforded and received the $20,000 maximum benefit payable under section 69(b). Thus, since the appellants would gain nothing by an invalidation of section 69(b), no consideration was given to the constitutional arguments made by the appellants. The Court's restraint in not speaking to the constitutional issues, not only fulfilled the objective of avoiding constitutional adjudication, but further exemplified the Court's own obvious reluctance to issue advisory rulings.

There is no doubt that the state court's decision is based exclusively on a non-federal ground in this case. Similarly, there can be no claim that federal law has been erroneously interpreted when the state court has not treated federal law at all. Inasmuch as this Court may not review a decision where a state court has an alternative holding in its opinion, one of which is non-federal, then, *a fortiori*, this Court must surely bar its jurisdiction where the state court decides solely on a non-federal ground and declines to consider the federal questions. *Wood* v. *Chesborough*, 228 U. S. 672. Moreover, the non-federal ground, in this case, is sufficiently broad to determine the rights of the appellants herein and is obviously independent of any considerations of federal law. See *Gaar, Scott & Co.* v. *Shannon*, 223 U. S. 468; *Hale* v. *Akers*, 132 U. S. 554, 564. Its adequacy is not assailable under these circumstances.

It is respectfully submitted that the decision of the New Jersey Supreme Court contains an independent, non-federal ground which would preclude this Court from review.

POINT II

The statutory maximum contained in N.J.S.A. 39:6-69(b) and its corollary provisions under the Unsatisfied Claim and Judgment Fund Law pursuant to which payment is made to persons injured in a single accident to assure some measure of relief where a judgment is recovered against an uninsured motorist is not violative of the due process clauses of the Federal and State Constitutions, nor does it constitute an unconstitutional taking of property without just compensation.

Appellants' due process and "taking without compensation" arguments are apparently the product of their misconception of the Legislature's reason for enacting this

statute, and is accordingly untenable. As indicated *infra*, the New Jersey Supreme Court in *Robson* v. *Rodriguez, supra*, spelled out the legislative objective in clear and unequivocal terms. The purpose of the Fund was to provide some measure of relief to those persons who sustain personal injuries or property damage, or both, caused by financially irresponsible and uninsured motorists, where no other source of compensation is available. *Dixon* v. *Gassert*, 26 N. J. 1, 138 A. 2d 14 (1958).

The Court in *Holmberg* v. *Aten*, 68 N. J. Super. 73, 83-84, 171 A. 2d 667, 672 (App. Div. 1961), where the claimant's application for payment from the Fund was denied on the ground that mandatory deductions for insurance benefits received exceeded the amount of her $5,000 negligence judgment, described the statutory purpose in the following language:

> "The Fund is not a substitutionary welfare agency—and in this sense it is available to wealthy and poor alike—but it is a legislative mechanism for assuring victims of another's negligence financial remedy to some minimum extent *for the damages caused by that negligence.*"

As significant as the limited purpose of the statute is, the means by which the objective is accomplished is equally noteworthy. The claimant, after receiving payment from the Fund, still retains as against the judgment-defendant, the benefit of the unpaid portion of the principal and interest due on the judgment. For

> ". . . if more money is collected upon any such judgment than the amount paid out of the fund, the director [of the division of motor vehicles] shall pay the balance, after reimbursing the fund, to the judgment creditor." N.J.S.A. 39:6-77.

In effect, the claimants receive a cash advance from the Fund with the continuing prospect that at some future date, the balance of the judgment will be collected and paid. The economic hardship which would have fallen squarely on the claimants is shifted partially to the Fund.

It is difficult to fathom the constitutional "loss" or "taking" suffered by the appellants under these circumstances. Arguing, therefore, a denial of due process or a taking of an inchoate interest in property without just compensation presupposes that a "loss" or a "taking" has occurred. Factually, the premise for appellants' argument is nonexistent and the whole argument must fall.

POINT III

To assure equal and like treatment on a minimum uniform basis, the Legislature provided that the aggregate limit of liability principle is applicable whether the culpable motorist is insured or uninsured where two or more persons are injured in a single accident.

Appellants further contend that a denial of equal protection results because the size of a person's payment from the Fund in any given accident depends upon whether he is singly injured or injured along with others.

If he were singly injured, it is asserted, he may be eligible to receive the statutory maximum of $10,000. N.J.S.A. 39:6-73(c)(1); 39:6-69(a); whereas, if he were injured along with others in a single accident, he would be forced to share in the $20,000 maximum fund with the others, thereby receiving less than the statutory maximum of $10,000 to which he would allegedly otherwise be entitled. N.J.S.A. 39:6-73(c)(2); 39:6-69(b). The differing amounts

payable to a person, depending upon whether he is injured with or without others, does not, however, result in a denial of equal protection of the laws.

The constitutional requirement of equal protection is satisfied where all persons under like circumstances are treated in a like or similar manner. *Robson* v. *Rodriguez, supra.*

Before considering the basis of the classification, it is necessary to define the classes of persons affected by the legislation and the treatment of such persons within the class. Any person injured alone in any accident may be eligible to receive the statutory maximum of $10,000. N.J.S.A. 39:6-69(a). Correspondingly, when four persons (or six or eight) are injured in a single accident, they are all subject to that proportion the amount of their individual judgment bears to the same $20,000 maximum limitation in these circumstances. N.J.S.A. 39:6-69(b). Contrary to appellants' cry of unequal protection of the law, there is clearly equal protection under the law to the appellants, all of whom are similarly situated. No discriminatory treatment results *vis a vis* one person singly injured in a single accident from another person singly injured in a single and different accident. They are each subject to the statutory maximum of $10,000. Nor is there discrimination between a person injured along with others in a single accident and another person injured with others in a single and different accident. They are each subject to the statutory maximum of $20,000 to the extent it may be diminished by the proportion the judgment recovered by the other injured persons in the same single accident bears to the $20,000 limitation.

In effect, the legislature has created two classes of beneficiaries instead of one identical class as assumed by appel-

lant. They are: (1) persons singly injured in one accident; and (2) persons injured along with others in one accident. Within the classes, there is no discrimination. Although there may be a varying number of persons within the class subject to the $20,000 maximum, the variance in numbers within this class does not result in different treatment. It is true that the dollar and cents result may be different as between three injured persons in a single accident and four injured persons in a single accident, but the result depends upon the extent of the injury to each person, the size of the judgment reflecting the gravity of the injury and the proportion the individual judgment bears to the same $20,000 limitation applicable to all members within this class.

It should be recalled that the goal envisioned by the Legislature is far more limited than the one desired by the appellants, whose argument heralds a limitation linked to the need of the injured person. Where the injury may be the most severe as mirrored in the judgment recovered, the unreasonable limitation of the statute, it is argued, offers no flexibility. Pushed to its logical extreme, appellants' argument calls for a statute without any maximum providing full payment by the Fund for any judgment recovered against an uninsured motorist.

The legislative intent appears to have been otherwise. As discussed, *infra*, the purpose of the Fund is to provide "some measure of relief" and not complete indemnification. *Dixon* v. *Gassert, supra; Robson* v. *Rodriquez, supra.* Prior to the existence of the Fund, the injured party had a legal right to collect a judgment against a judgment-proof debtor. With the enactment of the law, the remedial characteristics of the legal right were affected. See Elder, *The Unsatisfied Judgment Fund and the Irresponsible Mo-*

torist, supra, pp. 156-159. For one, the victim does in fact receive payment from the Fund within certain statutory limits, where, previously, payment was unavailable.

It is, however, the reasonableness of these very maximum limitations which are the subjects of appellants' charge of constitutional invalidity. The limitations are: in the case of personal injury or death a maximum of $10,000 for any one person, and of $20,000 for any one accident. N.J.S.A. 39:6-69(a) and (b). Before the amendments to the Fund Law in 1958 by P.L. 1958, c. 99, the original maximums were $5,000 and $10,000. P.L. 1952, c. 174. Parallel amendments were made in the Motor Vehicle Security-Responsibility laws to raise the original maximums from $5,000 and $10,000 to $10,000 and $20,000. See P.L. 1958, c. 95, §§1, 2, 3, 4, 6 [amended limits]; P.L. 1952, c. 173, §§3, 9, 15, 16, 24 [original limits]. Thus, regardless of whether a person, along with others, was injured by an insured or uninsured motorist, a minimum, uniform measure of relief was assured. It would certainly have been unfair if the minimal relief which a person could obtain was greater where the motorist was uninsured. Rather than permit such unequal treatment to occur, the Legislature employed the same minimum aggregate limits with regard to uninsureds and insureds. Thus, instead of minimizing equality among persons injured in a single accident, as appellants contend, the Legislature sought to achieve a maximum of equality.

It is submitted that the appellants have failed to demonstrate the unreasonableness of the legislative classification on equal protection grounds. Moreover, appellants' characterizing as an indefensible goal the suggestion of the Court below that the aggregate limitation operates to limit the exposure of the Fund or facilitate its solvency is clear-

ly defensible (Jurisdictional Statement, p. 12). The fact that the Director of the Division of Motor Vehicles has the authority to assess both uninsureds and insurers in terms of the probable amount to meet the needs of the Fund was not tantamount to a legislative delegation to raise statutory maximums. N.J.S.A. 39:6-63. Hopefully, it will assure solvency within the existing statutory limitations, although the most recent report of the Fund's manager for the year ending March 31, 1966 indicates a balance sheet insolvency if the valuation figure placed on all pending claims became due at the same time. Similarly, appellants, rejection of limiting the exposure of the Fund is not well founded. Although the likelihood of vehicular catastrophe may be rare, that does not mean such a contingency can be reasonably ignored when funding against all vehicular risks. Certainly, a Legislature would have been derelict in its responsibilities if it chose to overlook what might happen.

Appellants place heavy reliance on two decisions to support their position. "Directly in point", according to appellants, "is the decision of the Supreme Court of Iowa in *Collins* v. *State Board of Social Welfare,* 248 Iowa 369, 81 N. W. 2d 4 (1957)." There, the Court struck down an amendatory proviso limiting grants of aid to dependent children to a maximum of $175.00 per month regardless of the need of each child in the home. The Court concluded that the subclassification, *i.e.,* dependent children, based solely upon the number of children in the home, with no consideration as to need, was completely disconnected from the basic classification which had as its announced purpose to provide for the needy child. The amendment was considered discriminatory because it was contrary to the basic purpose of the Act. *Collins* v. *State Board of Social Welfare, supra,* p. 9. [Three justices dissented in the *Collins* case.]

Here, unlike *Collins*, the New Jersey Supreme Court has repeatedly emphasized that the primary purpose of the Fund Law was to provide "some measure of relief". *Dixon* v. *Gassert, supra; Robson* v. *Rodriguez, supra.* Thus, the aggregate limit imposed by the Legislature which is uniformly applicable to persons injured by insureds and uninsureds alike does no violence to the more limited goal of some minimum relief embraced by the Fund Law.

Appellants also seek comfort in this Court's decision in *Smith* v. *Cahoon*, 283 U. S. 553. There, one of the grounds for holding a Florida law invalid was that insofar as the statute was designed to safeguard the public with respect to the use of the highways certain private carriers transporting farm products, milk, butter or fish or oysters were relieved of the necessity of obtaining certificates of public convenience and posting security to protect the public. Others, who might carry for hire bread or sugar, or tea or coffee, or groceries in general, were required to comply. *Smith* v. *Cahoon, supra*, p. 567. The discrimination, which had no justification, was held to be wholly arbitrary.

No comparison exists with regard to the statutes in question here. Differentiating between members of the public singly injured or injured in mulfiple, as appellants would do, only serves to isolate part of a more comprehensive legislative scheme. The aggregate limit, as pointed out hereinbefore, applies to assure a minimum, uniform level of relief to all persons injured by both insured and uninsured motorists in New Jersey. No invidious discrimination inheres in this situation. See *Moan* v. *Coombs*, 47 N. J. 348, 221 A. 2d 10 (1966) where the New Jersey Supreme Court sustained the constitutionality of the Unsatisfied Claim and Judgment Fund Law against an equal protection attack in its rejection of a claim for benefits by a

Pennsylvania resident injured by an uninsured New Jersey resident in New Jersey when Pennsylvania did not afford New Jersey residents substantially similar recourse.

In any event, if the appellants are dissatisfied with the statutory maximums under the Fund Law, let them convince the New Jersey Legislature that upward revision is necessary. Their remedy for an increased measure of relief is not to be found in this Court; it should be pursued in the State Legislature.

CONCLUSION

The New Jersey Supreme Court has construed, as a matter of state substantive law, a provision of the Unsatisfied Claim and Judgment Fund Law, which disposes of appellants' claim for additional monies. The Supreme Court of New Jersey's decision was rendered independent of any consideration of federal law and was adequate in itself to support the judgment. If this Court were to entertain this appeal under these circumstances, it would in effect be catering to the desires of appellants for the rendition of an advisory opinion on the constitutionality of a law which could not otherwise affect the disposition of the case by the state court.

It is further submitted that the appellants have raised no substantial Federal question which would warrant the further attention of this Court and, therefore, it is respectfully urged that the instant appeal be dismissed.

Respectfully submitted,

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